

Message Text

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ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 ACDA-07 AGR-05 AID-05 CEA-01

CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00 DOTE-00

EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02 INR-07

INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-06

OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06 SAL-01

FEA-01 AF-08 ARA-06 EA-07 EUR-12 NEA-10 OIC-02 /160 W
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TO SECSTATE WASHDC PRIORITY 8729

C O N F I D E N T I A L USUN 3301

FROM LOS DEL

E.O. 11652: GDS

TAGS: PLOS

SUBJ: LOS: INFORMAL PLENARY ON DISPUTE SETTLEMENT --
AUGUST 17

1. INFORMAL PLENARY AUGUST 17 COMPLETED ARTICLE 11
(EXPERT ADVICE) AND TOOK UP ARTICLE 12 (PROVISIONAL
MEASURES).

2. ALL SPEAKERS HAD CONSIDERABLE DIFFICULTY WITH ART. 11.
CRITICISMS WAS FOCUSED ON THE IMPRESSION GAINED FROM
PARA. 2 THAT FINDINGS HAVE SOME BINDING EFFECT; CONFUSION
AND INCONSISTENCY BETWEEN ART. 11 OF PART IV AND ICJ
STATUTE (ARTS. 30, 50 AND 52) OR STATUTE OF THE LOS
TRIBUNAL (ART. 16); CLOSE RELATIONSHIP OF ART. 11 TO SPECIAL
PROCEDURES IN ANNEX II; AND LACK OF NECESSITY TO HAVE
A GENERAL ARTICLE IN MAIN TEXT WHEN ISSUE SHOULD BE DEALT
WITH IN THE ANNEXES AND, IN CASE OF ICJ, THE STATUTE OF THE
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ICJ.

3. AT MOST, SPEAKERS FROM GROUP OF 77 (EXCEPT CHILE) WOULD ACCEPT SHORT VERSION OF ART. 11 PROPOSED BY TUNISIA. EUROPEANS WOULD PREFER SHORT VERSION PROPOSED BY UK. BOTH PROPOSALS AMOUNT TO GENERAL ENABLING CLAUSES LEAVING ISSUES TO THE ANNEXES OR ICJ STATUTE. DIFFERENCE IS THAT TUNISIA WOULD NOT REPEAT NOT INCLUDE ASSESSORS THAT SIT WITH THE TRIBUNAL WITHOUT THE RIGHT TO VOTE, WHILE UK WOULD RETAIN THAT IDEA.

4. ATTACK ON ARTICLE 11 TOOK THE FORM OF A CONCERTED GROUP OF 77 OVE, WITH ELEVEN SPEAKERS SUPPORTING TUNISIA. JAPAN, FRANCE, SPAIN, AND CHILE SUPPORTED UK, ECUADOR TOOK A DIFFERENT APPROACH BY SUGGESTING THAT TRIBUNAL COULD RESORT TO SERVICES OF EXPERTS AT REQUEST OF A PARTY TO THE DISPUTE OR ON ITS OWN INITIATIVE, THE COMMITTEE SHOULD BE COMPOSED OF EQUAL NUMBER OF PERSONS APPOINTED BY THE PARTIES WITH UMPIRE AGREED BY PARTIES OR, IN ABSENCE OF AGREEMENT, BY SECRETARY GENERAL OF RELEVANT SPECIALIZED AGENCY WITH APPROVAL OF THE TRIBUNAL, AND THAT EXPERT OPINIONS SHOULD HAVE NO BINDING EFFECT.

5. ISRAEL SAID PART IV SHOULD MAKE CLEAR AT SOME POINT THAT DISPUTES BROUGHT BEFORE ICJ WOULD BE GOVERNED BY THE ICJ STATUTE.

6. EIGHT SPEAKERS (FRANCE, NETHERLANDS, JAPAN, LIBERIA, VENEZUELA, SWITZERLAND, YUGOSLAVIA AND USA) SUPPORTED CONCEPT OF PROVISIONAL MEASURES CONTAINED IN ART. 12.

7. FRANCE SOUGHT DELETION OF ART. 12, PARA. 2 BECAUSE OF THEIR OPPOSITION TO LOS TRIBUNAL, BECAUSE A FORUM NOT CHOSEN BY PARTIES UNDER ART. 9 WOULD BE ACTING, AND BECAUSE DELAYING TACTICS WOULD BE ENCOURAGED. NETHERLANDS SOUGHT TO DELETE THE REFERENCE IN PARA. 2 TO THE LOS TRIBUNAL AND REPLACE IT WITH THE ICJ. JAPAN AND SWITZERLAND SUPPORTED DELETION OF PARA. 2. SWITZERLAND THOUGHT PROVISIONAL MEASURES SHOULD ALSO BE AVAILABLE

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ON THE INITIATIVE OF THE TRINUNAL. VENEZUELA SUGGESTED PROVISIONAL MEASURES SHOULD BE SUBJECT TO REVIEW AND MODIFICATION IF NECESSARY.

8. USA SUPPORTED SWISS SUGGESTION TO ALLOW TRIBUNAL TO INDICATE OR PRESCRIBE PROVISIONAL MEASURES ON ITS OWN INITIATIVE, OPPOSED DELETION OF PARA. 2 BECAUSE SWIFT PROVISIONAL MEASURES SHOULD BE AVAILABLE WHERE ARBITRATION

IS BEING EMPANELED, SAID US HAS NO REPEAT NO SPECIAL PREFERENCE BETWEEN ICJ AND LOS TRIBUNAL IN PARA. 2, AND POINTED OUT THAT PARA. 2 DIFFERS FROM PARA. 1 IN ALLOWING LOS TRIBUNAL TO PRESCRIBE MEASURES WHEN A FORUM OTHER THAN ONE INCLUDED IN ART. 9, SUCH AS CONCILIATION, WAS NOT AUTHORIZED TO PRESCRIBE THEM.

9. EVENSEN INDICATED INFORMAL PLENARY WOULD BEGIN MEETING TWICE A DAY TO EXPEDITE ITS WORK.
BENNETT

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Margaret P. Grafeld
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